

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY**

NASDAQ, INC.; NASDAQ ISE, LLC;  
AND FTEN, INC.;

Plaintiffs,

v.

MIAMI INTERNATIONAL HOLDINGS,  
INC.; MIAMI INTERNATIONAL  
SECURITIES EXCHANGE, LLC; MIAX  
PEARL, LLC; AND MIAMI  
INTERNATIONAL TECHNOLOGIES,  
LLC;

Defendants.

Civil Action No. 3:17-cv-06664-BRM-DEA

**NOTICE OF SUPPLEMENTAL AUTHORITY**

Currently pending before the Court is Defendants' Motion to Dismiss the Complaint (Dkt. No. 28). Briefing closed on the motion on January 29, 2018. Plaintiffs Nasdaq, Inc., Nasdaq ISE, LLC, and FTEN, Inc. ("Nasdaq") file this notice to bring to the Court's attention subsequent authority that is relevant to Defendants' motion to dismiss.

Specifically, on October 9, 2018, the U.S. Court of Appeals for the Federal Circuit issued an opinion in *Data Engine Technologies LLC v. Google LLC*, Appeal No. 2017-1135, reversing-in-part the lower court's grant of judgment on the pleadings that certain patent claims of three patents are ineligible under 35

U.S.C. § 101. A copy of the opinion is attached as Exhibit A. The opinion is relevant to the eligibility of the patents at issue in Defendants’ pending motion to dismiss for at least the following reasons.

(a) The Federal Circuit held that, “The Tab Patents solved [a] known technological problem in computers in a particular way—by providing a highly intuitive, user-friendly interface with familiar notebook tabs for navigating the three-dimensional worksheet environment. . . . Representative claim 12 recites precisely this technical solution and improvement in computer spreadsheet functionality. The claim recites specific steps detailing the method of navigating through spreadsheet pages within a three-dimensional spreadsheet environment using notebook tabs.” Slip Op. at 13-14.

(b) Moreover, the Federal Circuit distinguished the Tab Patents at issue from claims that would have been found patent-ineligible, explaining that “[t]he claimed method does not recite the idea of navigating through spreadsheet pages using buttons or a generic method of labeling and organizing spreadsheets. Rather, the claims require a specific interface and implementation for navigating complex three-dimensional spreadsheets using techniques unique to computers . . . [and] the claim[s] recite[] a specific structure (i.e., notebook tabs) within a particular spreadsheet display that performs a specific function (i.e., navigating within a three dimensional spreadsheet).” *Id.* at 15, 18-19.

(c) In rejecting the alleged infringer’s argument that “humans have long used tabs to organize information [using] tabbed notebooks, binder dividers, file folders, and sticky Post-it notes,” the Federal Circuit clarified that “[i]t is not enough, however, to merely trace the invention to some real-world analogy. The eligibility question is not whether anyone has ever used tabs to organize information. That question is reserved for §§ 102 and 103. The question of abstraction is whether the claim is ‘directed to’ the abstract idea itself . . . . Google fails to appreciate the functional improvement achieved by the specifically recited notebook tabs in the claimed methods.” *Id.* at 20.

Dated: November 14, 2018

Respectfully submitted,

By: /s/ Michael Critchley, Sr.

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